Table of Contents

IAB# SH2351000/FO2379073

Involved Deputy Nicholas De Leon

Involved Deputy Luis Mrad

Involved Deputy [redacted]

Witness Sergeant Erick Kim

Witness Deputy Yvonne Shannon

Witness Sergeant Angela Becerra

Witness [redacted]

Witness [redacted]

DEPOSITION INTERVIEW

Involved Deputy Samuel Orozco

Involved Deputy Frederick Sykes

Involved Deputy Jerry Esparza

Involved Deputy Nicholas De Leon

Involved Deputy Luis Mrad

Involved Deputy [redacted]

Witness Sergeant Erick Kim

Witness Sergeant Angela Becerra

EXHIBITS:

- **A- Homicide Investigation Book**
- **B- Homicide Discovery Compact Disc (Includes Dispatch Radio Traffic and crime scene photographs)**
- **C- Photographs Shown to Deputy Orozco**
- **D- Photographs Shown to Deputy Sykes**
- **E- Photographs Shown to Deputy Esparza**
- **F- Photographs Shown to Deputy De Leon**
- **G- Photographs Shown to Deputy Mrad**
- **H- Photographs Shown to Deputy [redacted]**
- **I- Photographs Shown to Sergeant Kim**

J- Photographs Shown to Deputy Shannon

MISCELLANEOUS DOCUMENTS

Justice System Integrity Division (JSID) letter of opinion

Walnut Station PM Shift In-service dated 2/13/14

Walnut Station Incident History Report for Tag-154

Admonition forms



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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SCOTT K. GOODWIN • Director

July 16, 2014

Captain Duane Harris
Homicide Bureau
Los Angeles Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

RE: J.S.I.D. File #14-0127
L.A.S.D. File #014-00943-2910-013

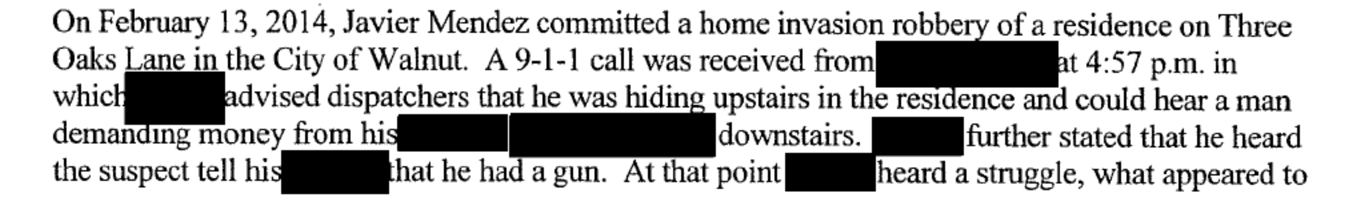
Dear Captain Harris:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 13, 2014 fatal shooting of Javier Mendez by Los Angeles Sheriff's Department (LASD) Deputies Sam Orozco, Fredrick Sykes, Jerry Esparza, Nicholas Deleon and Luis Mrad. We have concluded that the above deputies acted lawfully in self-defense, in defense of others, and in an attempt to arrest a dangerous felon.

The District Attorney's Command Center was notified of the shooting at approximately 7:01 p.m., on February 13, 2014. The District Attorney Response Team, comprised of Deputy District Attorney Natalie Adomian and District Attorney Senior Investigator [redacted] responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, 9-1-1 and dispatch recordings, crime scene diagrams, photographic evidence and witness statements submitted to this office by LASD Detectives Karen Shonka and Wayne Holston. The voluntary statements of Deputies Orozco, Sykes, Esparza, Deleon and Mrad were considered as part of this analysis.

FACTUAL ANALYSIS



On February 13, 2014, Javier Mendez committed a home invasion robbery of a residence on Three Oaks Lane in the City of Walnut. A 9-1-1 call was received from [redacted] at 4:57 p.m. in which [redacted] advised dispatchers that he was hiding upstairs in the residence and could hear a man demanding money from his [redacted] downstairs. [redacted] further stated that he heard the suspect tell his [redacted] that he had a gun. At that point [redacted] heard a struggle, what appeared to

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be beating sounds and his [redacted] screaming. [redacted] then heard silence downstairs, and the suspect moving upstairs to where he was hiding. [redacted] provided a description of a black vehicle which was parked in front of his house.[1]

Multiple LASD patrol vehicles were dispatched to the location with the advisement that a home invasion robbery was in progress and the suspect had a gun. As patrol vehicles approached the location the responding deputies observed a black Honda Accord traveling away from the residence, westbound on Three Oaks Lane at a high rate of speed. The Honda, which matched the description provided by [redacted], nearly collided with a patrol vehicle before heading southbound on Lemon Street. Deputies observed Javier Mendez driving the vehicle and a female in the passenger seat. Deputies attempted to pull the vehicle over, engaging their lights and sirens. Dispatch and all units were advised of Mendez' location and the pursuit.

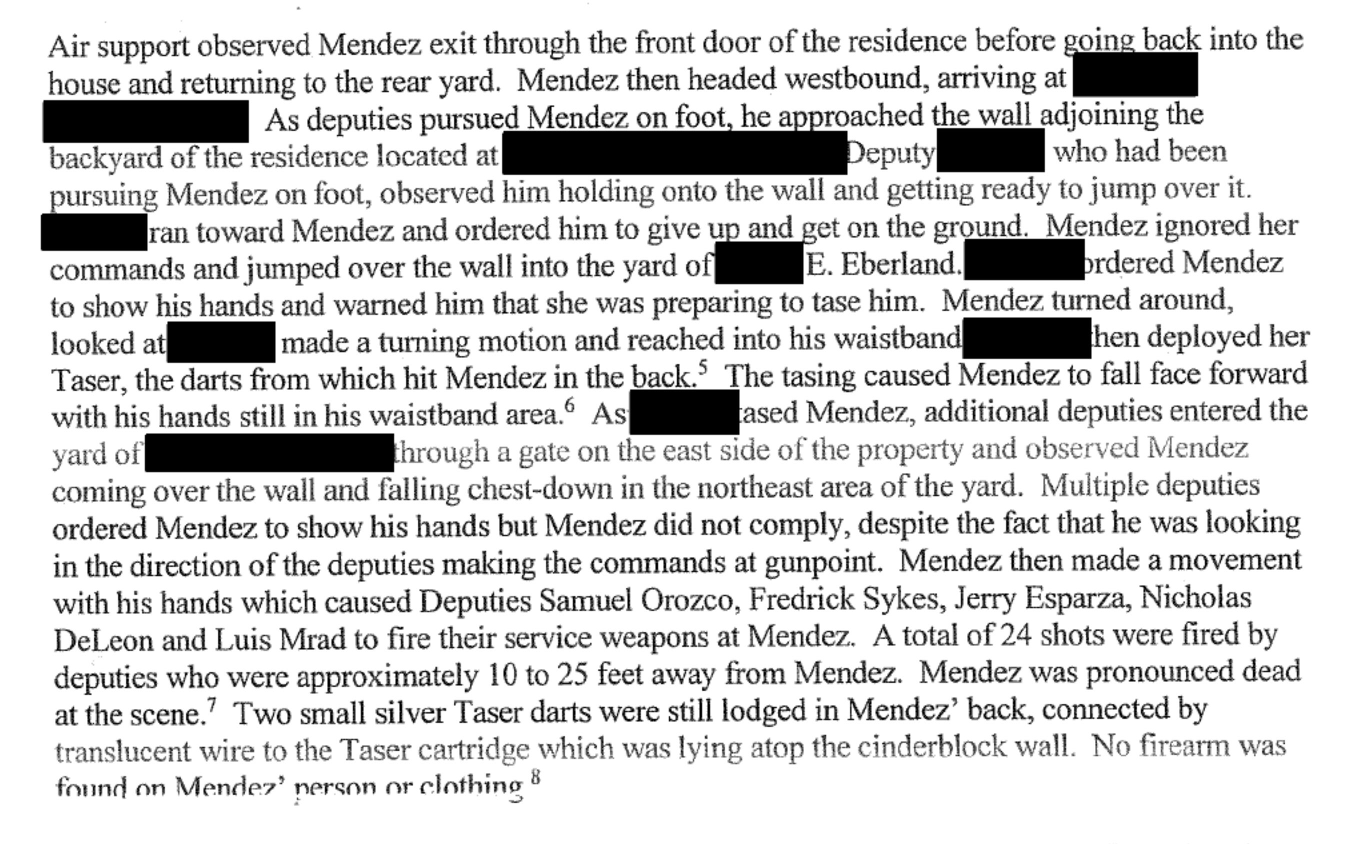
Rather than pulling over, Mendez increased his speed to up to seventy miles per hour in a residential area, weaving in and out of traffic and driving on the wrong side of the road. Deputies observed Mendez run multiple red lights without stopping, nearly causing multiple collisions with other vehicles. Air support was engaged during the pursuit and began reporting the Honda's movement.[2] Eventually Mendez entered the parking lot of Best Way market, located at 19050 La Puente Road in the City of La Puente. With deputies still pursuing him, Mendez collided with a parked vehicle and fled on foot. Having failed to engage the brake, the Honda continued to roll into another vehicle.[3] Mendez then ran into the Best Way market, exited from the back of the store and jumped over a wall toward a residence located at [redacted] Mendez then scaled multiple other walls heading eastbound on Northam, running through a total of nine residential backyards before heading north and entering six different residential backyards on Abelian Avenue. Mendez then turned east again, traveling through two residential backyards on E. Eberland Street before entering the residence located at [redacted]

[1] Deputies later found [redacted] unconscious, having suffered what appeared to be multiple blows to her head and face from a blunt object. Ms [redacted] was hospitalized and listed in critical condition, having suffered bleeding to her brain. Once her condition improved, she provided a statement to investigators. Ms. [redacted] stated she was awoken from a nap to find Mendez in her home, claiming he was there to collect money. Mendez told [redacted] he had a gun, and pointed to a bulge in his waistband, but she never saw a weapon. After giving Mendez her purse, Mendez struck her on the head with a hard object which she believed was a firearm. At that point she lost consciousness. When she regained consciousness she was lying on the hallway floor near the entrance to the garage.

[2] According to all witnesses, the quality of radio transmissions was poor due to the Walnut Station being on self-dispatch, as opposed to the main LASD dispatch. On the LASD frequency, each patrol vehicle only hears what is being broadcast by dispatch, as opposed to hearing all communications to and from dispatch. When on self-dispatch (the local station's frequency), all communications are broadcast over the air, which results in communications sometimes overlapping. Additionally, the local frequency does not have as clear of a signal as the LASD frequency.

[3] Deputies responding to the abandoned Honda observed an adult female, later identified as [redacted] in the passenger seat and her four year old [redacted] in the backseat. Property recovered from the vehicle was subsequently identified as having been taken in the robbery at the [redacted] residence. [redacted] also identified the Honda as the one he had seen parked in front of his residence during the robbery.

[4] Dispatch calls indicate that Mendez fought with a dog while running through one of the backyards to elude police. It is unclear which yard this occurred in from the transmissions. A subsequent search of the residence at [redacted] which Mendez entered, revealed that he left a trail of blood through the house as a result of injuries he received from the dog.



Air support observed Mendez exit through the front door of the residence before going back into the house and returning to the rear yard. Mendez then headed westbound, arriving at [redacted] As deputies pursued Mendez on foot, he approached the wall adjoining the backyard of the residence located at [redacted] Deputy [redacted] who had been pursuing Mendez on foot, observed him holding onto the wall and getting ready to jump over it. [redacted] ran toward Mendez and ordered him to give up and get on the ground. Mendez ignored her commands and jumped over the wall into the yard of [redacted] E. Eberland. [redacted] ordered Mendez to show his hands and warned him that she was preparing to tase him. Mendez turned around, looked at [redacted] made a turning motion and reached into his waistband [redacted] then deployed her Taser, the darts from which hit Mendez in the back.[5] The tasing caused Mendez to fall face forward with his hands still in his waistband area.[6] As [redacted] tased Mendez, additional deputies entered the yard of [redacted] through a gate on the east side of the property and observed Mendez coming over the wall and falling chest-down in the northeast area of the yard. Multiple deputies ordered Mendez to show his hands but Mendez did not comply, despite the fact that he was looking in the direction of the deputies making the commands at gunpoint. Mendez then made a movement with his hands which caused Deputies Samuel Orozco, Fredrick Sykes, Jerry Esparza, Nicholas DeLeon and Luis Mrad to fire their service weapons at Mendez. A total of 24 shots were fired by deputies who were approximately 10 to 25 feet away from Mendez. Mendez was pronounced dead at the scene.[7] Two small silver Taser darts were still lodged in Mendez' back, connected by translucent wire to the Taser cartridge which was lying atop the cinderblock wall. No firearm was found on Mendez' person or clothing.[8]

An autopsy was conducted on February 18, 2014, by Deputy Medical Examiner Raffi Djabourian who determined that the cause of death was multiple gunshot wounds. Dr. Djabourian determined Mendez had been shot a total of 22 times, 16 of those shots having been fatal. A toxicology screening revealed that Mendez had marijuana, alcohol, methamphetamine and cocaine in his system at the time of his death.

WITNESS STATEMENTS

Statement of Deputy Samuel Orozco

Deputy Orozco was on patrol with Deputy Sykes when he heard the radio call of a robbery in progress. Unfamiliar with the area, he was locating the route of travel to the location when he heard an update from dispatch that there was an informant hiding upstairs at the location, Mendez was downstairs with a gun and fighting could be heard. Sykes was driving his patrol vehicle and responded to the location with lights and sirens. While en route, Orozco heard radio transmissions from other responding deputies that Mendez had fled the location in a vehicle and was driving

[redacted] was still on the other side of the six foot cinderblock wall Mendez had climbed when she tased him.
[redacted] advised over the radio that she had tased Mendez.

[7] Jewelry, a wallet and currency recovered from Mendez' pockets was later identified as having belonged to the [redacted] family.

[8] No firearm was recovered in subsequent searches of the [redacted] residence, the vehicle Mendez was driving, the residence he entered at [redacted] the yards he ran through and the rear yard of [redacted] where the shots were fired.

erratically. Orozco and Sykes followed the pursuit and received updated information from dispatch regarding Mendez' location. When they learned Mendez had exited his vehicle and entered the Best Way market, they responded to that location to assist with containment. Orozco noticed that air support had arrived. Upon learning that Mendez had exited the rear of the market and was in the rear yard of the residence behind the market on the north side of Northam Street, Orozco and Sykes went to that location. Other deputies were already situated on Northam Street upon their arrival. They exited the vehicle near a residence where air support had reported seeing Mendez last. As he exited his vehicle, Orozco saw a female run from the residence, saying that Mendez was in her backyard. Air support then advised that Mendez continued to run eastbound, climbing walls into other backyards. Orozco paralleled Mendez' movements on Northam Street, only catching an occasional glimpse of Mendez' shirt as he climbed and jumped over walls. Orozco continued to parallel Mendez' movements as he fled through yards on Abelian Avenue. At one point, Orozco was advised by civilians that Mendez was in another backyard, possibly hiding in a shed. While searching the yard, Orozco heard via radio that Mendez had entered the house at [redacted] Orozco and other deputies converged upon the residence in an effort to contain Mendez inside. The deputies then learned from air support that Mendez had fled the residence and run to [redacted]

Upon arriving at that location, Orozco observed deputies standing near a wrought iron gate at the driveway on the east side of the location. The deputies were pointing toward the rear yard. One of the deputies opened the gate and Orozco entered the rear yard with approximately three other deputies. Orozco had no cover or concealment, and could see Mendez lying on the ground approximately 20 to 25 feet away. Mendez was laying on his stomach with his hands concealed underneath him at his waistband. Mendez appeared to be looking at Orozco and the other deputies as they approached. Orozco positioned himself against the wall of the residence in case Mendez tried to run.

Orozco and other deputies yelled at Mendez, ordering him to show his hands. Mendez appeared to look back, then moved his left arm. Orozco thought Mendez was looking behind him because a deputy might be coming over the wall to apprehend him.

Based upon Mendez' determination to avoid capture and believing he was armed with a handgun, coupled with the furtive movement of his left arm, Orozco believed Mendez was about to pull out a gun and start shooting at deputies. Fearing for his safety and the safety of his fellow deputies, Orozco fired three to four times at Mendez. Orozco was aware that other deputies had fired as well, and estimated that they had all started firing simultaneously. Orozco was unaware that Mendez had been struck with a Taser until he saw the Taser wires when he approached Mendez after the shooting.

Statement of Deputy Fredrick Sykes

Deputy Sykes gave the same account of the events which transpired prior to the shooting as Deputy Orozco. Sykes added that after he learned Mendez had entered and then fled one residence, he became fearful that Mendez would barricade himself inside a residence and take a person hostage.

When they arrived at [redacted] Sykes was behind Orozco entering the backyard. He saw Mendez climb over the wall and land on the ground. Sykes was approximately 10 to 12 feet from Orozco to the west when he observed this. Sykes observed Mendez laying on his stomach with his head turned, looking toward the deputies. His hands were underneath him, concealed at his waistband area. Sykes was focusing his attention on Mendez' hands in fear that he might suddenly produce a handgun and shoot them. Sykes felt that the deputies had no cover and were in a bad position.

Sykes heard several deputies ordering Mendez to show his hands. Sykes commanded him to do so as well. Mendez did not comply or make any statement, but was looking at the deputies. Sykes suddenly saw Mendez twitch and make a movement.[9] Afraid that he or one of the other deputies present were about to be shot, he fired his service weapon at Mendez. Sykes was unaware Mendez had been tased until after the shooting.

Statement of Deputy Jerry Esparza

Deputy Esparza heard the initial radio call and responded to the location of the robbery. As he neared the location, he observed a small black compact car speeding away from the location. Esparza indicated the car would have collided with his vehicle had he not swerved away to avoid a collision.

Esparza was at the Best Way market parking lot when a request was made for a deputy to respond to the street south of the shopping plaza. Esparza responded with another unit. Esparza was at the corner of Nogales and Northam Streets when he heard on the radio that Mendez had exited his vehicle and was running toward the market. Esparza heard from air support that Mendez had fled through the rear of the market and climbed over the wall onto a residential property. Esparza exited his patrol vehicle and walked eastbound paralleling Mendez as he ran eastbound through multiple backyards. Esparza felt Mendez was desperate to avoid capture. He was fearful that Mendez would enter a residence and barricade himself or take a person hostage. Esparza believed Mendez was armed with a gun.

As Mendez traveled through the rear yards of residences, a female exited her residence and stated that Mendez was in her backyard attempting to gain entry into her home. As Esparza approached the residence, air support announced Mendez was continuing over walls heading eastbound, but appeared winded. As Mendez continued to climb and jump walls, Esparza concluded he must be under the influence of some drug to continue fleeing in that fashion.

Esparza continued paralleling Mendez, and ultimately entered the east gate into the backyard at [redacted] He followed another deputy into the yard and stood at the east wall. Esparza could see Mendez on the ground approximately fifteen to twenty feet from his location.

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[9] When Orozco and Sykes were describing to investigators what they had seen Mendez do immediately before the shooting, both placed their hands at their waistband and demonstrated a sudden movement with their left arm by moving their elbow away from their waistband area.

Esparza heard multiple deputies ordering Mendez to show his hands. Mendez' hands were tucked underneath him and he appeared to be looking at each deputy. Esparza thought Mendez was counting the deputies. Esparza believed Mendez was about to produce a gun and start shooting at him and the other deputies present. Commands were still being directed towards Mendez to show his hands. Esparza personally ordered him to show his hands as well. Esparza felt that he had to do something to apprehend Mendez based upon the violence of the initial call and his blatant desperation to escape capture.

Esparza saw Mendez move as if he was adjusting himself near his waist. Esparza alerted the other deputies by yelling "I think he's got a gun, he's moving." Esparza thought the gun might have slipped down Mendez' pants and that Mendez was adjusting himself so he could reach the firearm.

Additional commands were given to Mendez at gunpoint. Esparza believed Mendez did not want to show his hands because he was holding a gun. Mendez made another adjustment and made a movement that caused Esparza to fire his service weapon at Mendez because he feared he and the other deputies were about to be shot and killed.

Esparza was aware that other deputies had shot as well, but believed he may have been the first to shoot. He fired his service weapon five to six times. Esparza believed it was a "do or die situation" given Mendez' driving toward a patrol vehicle, the chase, his belief that Mendez was armed and his fear that Mendez was about to shoot him and/or other deputies.

Statement of Deputy Nicholas Deleon

Deputy Deleon was on patrol when he heard the radio call of a robbery in progress. He heard that there was a gun involved, and also physical violence. He also heard details of the pursuit over the radio from patrol units and air support.

Deputy Deleon attempted to locate Mendez as he was climbing over walls. When Deleon heard Mendez was in the rear yard of [redacted] he along with other deputies went through the residence and into the yard trying to locate Mendez. Deputies were then advised that Mendez had entered the residence. Deleon thought Mendez might be attempting to take a family hostage and/or barricade himself inside the residence.

Deleon then heard an update that Mendez was heading toward the rear yard of [redacted] Deleon entered through the side gate on the east side of the yard and observed Mendez climbing the wall. Deleon drew his firearm and pointed it at Mendez, who was now coming over the wall. Mendez then fell to the ground on his stomach. Deleon made several commands for Mendez to remain on the ground and show his hands. Mendez remained on the ground with both hands concealed at his waistband as he looked at the deputies present. Deleon and other deputies continued to order him to show his hands. Mendez initially appeared to be ignoring all the commands, then suddenly made a movement and arched at his waist. Deleon was still unable to see Mendez' hands, and based upon the way he arched his hips and waist, Deleon believed he

was reaching for a firearm. Fearing he and his fellow deputies were about to be shot, Deleon fired his service weapon five to six times. Deleon was unsure which deputy shot first.

After the shooting Deleon stood by as other deputies handcuffed Mendez. Deleon had no knowledge that a Taser had been deployed until after the shooting.

Statement of Deputy Luis Mrad

Deputy Mrad was on patrol when he heard the broadcast of a robbery in progress. He heard that the caller was upstairs, Mendez was downstairs and there was a gun involved. The radio transmissions were very poor due to being on self-dispatch. As he headed toward the location, he heard an update that the caller could hear a fight downstairs. He then heard an update that a field deputy observed Mendez fleeing in a vehicle southbound on Lemon Avenue. He heard pursuing deputies and air support broadcasting the pursuit. When he heard Mendez had exited the vehicle, run through the market, and was now going over a wall into the rear yard of a residence, Mrad drove to a nearby location and exited his vehicle. Mrad joined up with Esparza when air support broadcast that Mendez was running eastbound through rear yards on the north side of Northam. Mrad and Esparza paralleled Mendez by running on the sidewalk and/or street of Northam Street as Mendez continued through the rear yards.

When they learned Mendez had changed direction, Mrad and Esparza ran back to where their radio cars were located to avoid Mendez evading containment. An LASD Explorer candidate had been running with him and Esparza as they paralleled Mendez. Mrad became concerned for the Explorer's safety due to Mendez being armed and ordered the Explorer to return to the patrol vehicle.

When air support announced another change in direction by Mendez, Mrad again paralleled Mendez' movements. A couple times Mrad was able to see Mendez' white t-shirt as he was jumping and climbing over the walls. Mrad could not, however, see whether or not Mendez had anything in his hands. Mrad attempted to use parked cars as cover in case Mendez produced a handgun as Mrad paralleled his movements.

After hearing Mendez had gained entry into a residence, Mrad saw a distressed female exit the front door of the location. Before Mrad was able to enter the residence, he heard Mendez had exited the rear of the residence and was heading over the wall into [redacted]

Mrad approached the front of the residence with other deputies and observed a wrought iron gate with mesh screen covering it.[10] One of the deputies opened the gate and Mrad was able to see into the rear yard. As Mrad entered the rear yard, he saw Mendez climb over the wall and fall to the ground. Mendez's hands were concealed under his stomach near his waistband. Mrad was perpendicular to Mendez and could see his left side, with only part of his arm visible from the elbow to the shoulder. Mendez was turned toward the deputies. Mendez was looking right at Mrad as he

[10] The mesh screen obscured his ability to see through the gate.

yelled at least three times for Mendez to show his hands. Mrad was approximately 10 to 15 feet away from Mendez.

Mendez ignored the commands and made no response while looking right at Mrad. Mrad did not see any movement, but was convinced Mendez was going to suddenly produce a firearm and begin shooting at him and other deputies based upon Mendez's desperate attempt to elude capture and the details he had heard from the robbery call. Mrad fired his weapon four to five times. Mrad believed he was the first to shoot. Mrad was unaware that a Taser had been deployed until after the shooting when he saw the Taser wires. Mrad was certain no deputies in the yard had tased Mendez and was unaware when the tasing had occurred.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others it if reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight….The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

California law also permits the use of deadly force by police officers when necessary to affect the arrest of a person who has committed a forcible and atrocious felony which threatens death or serious bodily harm. *People v. Ceballos* (1974) 12 Cal.3d 470. Forcible and atrocious crimes are those crimes whose character and manner reasonably create a fear of death or serious bodily injury. *Ceballos, supra, 12 Cal.3d at 479.* "An officer may use reasonable force to make an arrest, prevent escape or overcome resistance." *Brown v. Ransweiler* (2009) 171 Cal.App.4th 516. When

protecting the public peace, a police officer "is entitled to even greater use of force than might be in the same circumstances required for self-defense." *Id.*

The evidence examined in this investigation shows that Javier Mendez committed a violent home invasion robbery and then fled from police in a vehicle. When deputies attempted to capture Mendez, he engaged in a pattern of conduct which was extremely dangerous to public safety. He drove erratically, nearly causing multiple automobile collisions, and eventually crashed his car into a parked vehicle. Still attempting to avoid arrest, Mendez left his vehicle while it was still moving, despite there being a female and child still inside the car. Mendez then began trespassing on private property in his attempt to evade capture. Mendez continued to flee despite repeated orders to stop, and even being attacked by a dog. Mendez escalated the danger to the community when he broke into a residence during the pursuit.

Mendez' actions during the crime and pursuit were personally observed by Deputies Orozco, Sykes, Esparza, De Leon and Mrad, or conveyed to them via other deputies and/or radio transmissions. Deputies believed Mendez was armed with a firearm and were reasonable in their belief that Mendez might do harm to residents in the neighborhood in his effort to escape capture.

When Mendez entered the rear yard of [redacted] and fell to the ground, none of the deputies were aware that he had been tased from the other side of the wall. Although [redacted] had reported it to dispatch, multiple deputies were shouting at Mendez to show his hands and a helicopter was hovering above, making it unlikely that anyone could hear, much less process, that information. Additionally, none of the deputies were close enough to Mendez to see the clear wires which connected the Taser darts to Mendez, or the cartridge sitting on top of the six foot cinderblock wall. When deputies saw Mendez, with his hands concealed, ignoring all commands to show his hands as he looked right at them, then making a furtive movement towards his waistband, they were reasonable in fearing for their own safety, and the safety of others.

CONCLUSION

We find that Deputies Orozco, Sykes, Esparza, De Leon and Mrad acted lawfully in self-defense, in defense of others, and in an attempt to apprehend a dangerous fleeing felon when they used deadly force against Javier Mendez. We are closing our file and will take no further action in this matter.

Very truly yours,

JACKIE LACEY
District Attorney

By

ANN MARIE WISE
Deputy District Attorney
(213) 974-3888

c: Deputy Samuel Orozco #[redacted]
Deputy Fredrick Sykes #[redacted]
Deputy Jerry Esparza #[redacted]
Deputy Nicholas Deleon #[redacted]
Deputy Luis Mrad #[redacted]